

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JESSICA BIXLER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration

Defendant.

NO: 2:12-CV-3045-TOR

ORDER GRANTING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT

BEFORE THE COURT is Plaintiff's Motion to Alter or Amend Judgment

Pursuant to Federal Rule of Civil Procedure 59(e) (ECF No. 45). The motion was submitted for consideration without oral argument. The Court—having reviewed the briefing, the record, and files therein—is fully informed.

BACKGROUND

On July 21, 2015, the Ninth Circuit Court of Appeals vacated this Court's affirmance of the denial of Plaintiff's application for Supplemental Security

1 Income with instructions to remand to the agency for further proceedings. ECF
2 No. 33. This judgment went into effect on September 15, 2015. ECF No. 34. On
3 September 16, 2015, this Court remanded this matter to the Commissioner for
4 further proceedings consistent with the Ninth Circuit's memorandum disposition,
5 ECF No. 35, and entered judgment in favor of Plaintiff, ECF No. 36.

6 On December 18, 2015, this Court granted Plaintiff, as the prevailing party,
7 EAJA fees in the amount of \$6,890.45. ECF No. 44. In so granting, this Court
8 declined to award Plaintiff any fees incurred on appeal, finding that such a request
9 should have been presented to the Ninth Circuit Court of Appeals in the first
10 instance. *Id.*

11 In the instant motion, Plaintiff moves the Court to alter its order granting
12 fees in part. ECF No. 45. In support, Plaintiff cites to *Natural Resource Defense*
13 *Council, Inc. v. Winter*, 543 F.3d 1152 (9th Cir. 2008), to demonstrate that the
14 district court may award EAJA fees for work performed on appeal. *Id.* In response,
15 Defendant reiterates the position that fees should be denied but not on the ground
16 that the Court does not have authority to award appellate fees. ECF No. 46.

17 This Court finds the cited authority is dispositive; the district court has the
18 authority to award appellate fees under EAJA. *Nat. Res. Def. Council v. Winter*,
19 543 F.3d at 1163-64 (rejecting the Navy's argument that the plaintiff should have
20

1 moved the Ninth Circuit for appellate fees and holding that such a request is
2 properly filed in the district court).

3 Here, Defendant's objection to the fee petition focused only on whether
4 EAJA fees should be awarded, not whether Plaintiff's requested amount is
5 reasonable. *See* ECF Nos. 41, 46. This Court has now also reviewed the Ninth
6 Circuit record and finds that the hourly rates are reasonable and do not exceed the
7 statutory maximum rates under EAJA and that the total number of hours expended
8 is reasonable. Accordingly, this Court grants Plaintiff's motion to alter or amend
9 judgment and awards Plaintiff EAJA fees in the total amount of **\$24,407.06**.

10 Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 598 (2010), and despite
11 Plaintiff's request to the contrary, ECF No. 45 at 10-11, the award shall be payable
12 directly to Plaintiff and mailed to Plaintiff's attorney.

13 **IT IS ORDERED:**

14 1. Plaintiff's Motion to Alter or Amend Judgment Pursuant to Federal Rule
15 of Civil Procedure 59(e) (ECF No. 45) is **GRANTED**. The Commissioner is
16 directed to pay EAJA fees in the total amount of **\$24,407.06** (not the \$6,890.45 as
17 previously ordered).

18 2. The EAJA award shall be made payable directly to Plaintiff and mailed
19 to D. James Tree, Plaintiff's attorney, at 3711 Englewood Avenue, Yakima,
20 Washington 98902.

1 The District Court Executive is directed to enter this Order, **enter an**
2 **Amended Judgment**, and provide copies to counsel. The file shall remain closed.
3 **DATED** January 26, 2015.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

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